

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2855

IN THE MATTER OF:

Served May 7, 1986

Application of WHITE HOUSE)	Application No. 104
SIGHTSEEING CORPORATION for a)	
Certificate of Public Convenience)	
and Necessity)	

By petition filed January 21, 1986, American Coach Lines, Inc. ("ACL"), seeks to reopen the application of White House Sightseeing Corporation ("White House" or "applicant"), ACL's predecessor in interest, for the purpose of supplementation of the record and "correction of the grandfather authority." ACL asked that this petition be set for oral hearing and be consolidated with Case No. AP-85-36, Application of American Coach Lines, Inc., for a Certificate of Public Convenience and Necessity to Conduct Charter Operations. */

As grounds for this petition ACL relied on the evidence in Application No. 104 and asserted that because applicant was not represented by counsel it ". . . apparently presumed its certificate authorized a continuation of the [general charter] service it had been performing . . . [and] . . . continued performing such service until July, 1985." By implication applicant compared its position to the position of Raymond Warrenner t/a Blue Lines Sightseeing Company, Application No. 58. Applicant argued that several ICC cases and the filing of a Petition to Reopen by Safeway Trails, Inc., support the proposition that it is entitled to the relief sought.

Gold Line, Inc., Eyre's Bus Service, Inc., and National Coach Works, Inc., protestants in Case No. AP-85-36 replied jointly. Protestants' reply noted that the grandfather certificate issued by WMATC embraced all authority to which White House's ICC certificate entitled it and that the Commission has effectively ruled in this matter in Case No. AP-85-08, Application of American Coach Lines, Inc., for Declaratory Order, Order No. 2738, served July 22, 1985.

*/ This matter was decided prior to the hearing in Case No. AP-85-36; it was announced on the record at the hearing that the Commission had decided to deny the petition; and the purpose of this order is to formalize that decision and to publish the reasons underlying it. See Minutes of Washington Metropolitan Area Transit Commission, February 6, 1986.

Having thoroughly reviewed all the evidence filed by White House as part of its grandfather application, we find based on that evidence and subsequent orders of the Commission that ACL's Petition to Reopen Grandfather Application must be denied. White House timely filed its grandfather application seeking special operations, charter, and contract authority. In support of this filing, it submitted its ICC certificate authorizing special operations and charter operations, both of which were restricted to sightseeing and pleasure tours, and a copy of a tariff listing rates for individually ticketed sightseeing tours and charter sightseeing tours within the District of Columbia. White House was given authority commensurate with this evidence. White House neither asked for a hearing on this matter nor sought to supplement its application in any way. When the Commission issued Order No. 157, served June 18, 1962, disposing of White House's application, it did not seek reconsideration. In two decades White House never raised one question regarding the scope of its authority. The matter is administratively final, and the record in that case is closed.

We are not persuaded that the three ICC decisions cited by ACL in support of its position mandate a different result. In two of those cases, the ICC reopened grandfather proceedings for receipt of additional evidence in support of documentary evidence filed in the grandfather application itself. The effect of the reopening was to reinterpret existing evidence. In the third case, reopening was granted where a carrier sought that remedy immediately following an ICC order specifically noting an interpretation at odds with that of the certificate holder. Order No. 1525, served March 29, 1976, specifically advised White House that it lacked authority to perform any charter movements other than round trip sightseeing and pleasure tours. Had White House been operating under the mistaken presumption here alleged it might have been expected to seek reopening of the grandfather proceeding in 1976. No such action was taken, however, because White House was a sightseeing operator. It was only after White House was purchased by the current owners of American Coach, Inc., that the extent of that company's operating authority became an issue. In Case No. AP-85-08, Application of American Coach Lines, Inc., for Declaratory Order or, in the Alternative, Temporary Authority to Conduct Charter Operations between Points in the Metropolitan District, ACL asked that the Commission interpret its certificate to mean something other than the plain wording indicated or in the alternative find that an immediate and urgent need existed to perform charter services and that there was no other carrier capable of performing that service despite the plethora of service then available and the fact that no fewer than six certificated coach operators stepped forward indicating their readiness and ability to provide that transportation. By Order No. 2738, served July 22, 1985, and incorporated herein by reference, that application was denied.

Nor do we find the WMATC cases cited by ACL appropriate. The grandfather application of Raymond Warrenner t/a Blue Lines Sightseeing Company, Application No. 58, was decided only after several informal conferences and two days of hearing, the result being substantial evidence supporting his claim of providing the services alleged to be entitled to certification under Title II, Article XII, Section 4(c) of the Compact. Moreover, that is a case in which reconsideration and appeal were sought. Finally, even had a decision been made in Blue Lines based on the application alone as was the case with White House and which was specifically authorized under the grandfather provision of the Compact, the application of Blue Lines would have supported a grant of charter authority based on the tariff filed with the District of Columbia Public Service Commission and submitted as part of Application No. 58. As for Application No. 96 of Safeway Trails, Inc., Petition to Reopen, that application deals with what is primarily a legal issue and consequently does not involve the evidentiary problems inherent in the reopening here sought.

THEREFORE, IT IS ORDERED that the petition of American Coach Lines, Inc., to reopen Application No. 104, Application of White House Sightseeing Corporation for a Certificate of Public Convenience and Necessity, is hereby denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director